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May 9, 2003

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MAY - 9 2003

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street SW
Room TW A-325
Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re: **Ex Parte**
CC Docket 99-273, Provision of Directory Listing Information Under the
Telecommunications Act

Dear Ms. Dortch:

The attached letter was sent to Mr. Gregory Cooke of the Wireline Competition Bureau on May 9, 2003. Please enter it into the record of the above referenced proceeding.

Sincerely,

A handwritten signature in cursive script, appearing to read "Toni Acton", written in black ink.

Toni R. Acton
Associate Director

Attachment

cc: G. Cooke
M. Greene
R. McDonald
D. Cooper

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Associate Director
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May 9, 2003

Mr. Gregory Cooke, Deputy Division Chief
Competition Policy Division
Wireline Competition Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: **Ex Parte**
CC Docket 99-273, Provision of Directory Listing Information Under the
Telecommunications Act

Dear Mr. Cooke:

On April 21, 2003, representatives of SBC met with you, Marcy Greene, Rodney McDonald and Darryl Cooper of the Wireline Competition Bureau to discuss issues raised in the pending SBC/BellSouth Petition for Clarification or Reconsideration of the FCC's First Report and Order in the above referenced docket. As a result of this meeting, SBC provides the following additional information relating to the issues under consideration in its petition and the impact of these issues on the Directory Assistance Listings (DAL) marketplace.

SBC currently does not restrict the use of DAL in compliance with the FCC's order and provides DAL in a nondiscriminatory manner consistent with 251(b)(3). SBC should, however, have the ability to negotiate reasonable DAL use restrictions and should have the contractual freedom to negotiate DAL rights and compensations with competitive local exchange carriers (CLECs) or their agents. In this regard, to the extent DAL is to be used by a CLEC for marketing purposes, SBC should be able to negotiate reasonable limitations, including whether the bulk resale of its DAL without compensation is appropriate. If bulk resale of DAL is agreed upon, SBC should be compensated for the use of its DAL by non-purchasing third parties. In situations where competitive DA providers are purchasing SBC's DAL, market-based pricing should apply.

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The Telecommunications Act of 1996 (Act) supports SBC's position. Section 251(b)(3) provides that local exchange carriers (LECs) shall provide nondiscriminatory access to directory assistance listings. The Act does not prohibit LECs from negotiating reasonable nondiscriminatory restrictions with another party as long as these restrictions do not limit that party's access to the listings. Restrictions that limit a party's right to sell the listings in bulk to a telemarketing company, or to use the listings to publish a telephone directory, for instance, do not restrict a party's access to the listings.

Similarly, restrictions on a party's ability to resell the listings in bulk without corresponding compensation would not restrict that party's access to the listings. The party could continue to access the listings, which is all that is required under Section 251(b)(3). If, however, the party wants to resell the listings, the party should compensate the LEC for the resold listings. Such arrangements already exist between SBC's LECs and various independent telephone companies. In the BellSouth Louisiana II decision¹, the FCC ruled that under Section 271(c)(2)(B)(vii), BellSouth had to release all directory assistance listings in its database to requesting CLECs, not just BellSouth's listings. As a result of that decision, SBC's LECs entered into agreements with various independent telephone companies that allow SBC's LECs to release the independent telephone company listings contained in SBC's regional DA databases to requesting CLECs, provided SBC's LECs compensate the independent telephone company when the listing is resold. Such limitations have not restricted the ability of SBC's LECs to access independent telephone company directory assistance listings, and provide such listings, along with its SBC listings, to requesting CLECs.²

Since the First Report and Order was released on January 23, 2001, SBC has lost half of its DAL customers. These customers represent a loss of approximately \$1.4 million dollars in annual wholesale DAL revenue.

¹ Application of BellSouth Corporation, BellSouth Telecommunications, Inc. and BellSouth Long Distance, Inc., for *Provision of In-Region, InterLATA Services Louisiana, Memorandum and Order*, CC Docket 98-121, 1998.

² See also, CPUC Decision 00-10-026, *Order Instituting Rulemaking on the Commission's Own Motion into Competition for Local Exchange Service*, October 2000 where the Commission supported the concept that a carrier should be compensated when listings are resold. Specifically, the Commission found that Pacific Bell could release Roseville Telephone directory assistance listings in the Pacific Bell directory assistance database to requesting CLECs, but required Pacific Bell to inform third party purchasers of Roseville's listings that they must pay Roseville for applicable charges under Roseville's directory assistance listings tariff.

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In addition, SBC believes that it should not be required to release non-local listings that are purchased from other entities to enhance SBC's DA service. Third parties have the same opportunity to secure DA listings in the competitive market directly from the original source under the same terms and conditions as SBC. If SBC is required to provide these listings (which are equally available to other carriers and their agents), SBC should be held harmless in instances where there is an error or omission in an ILEC's DAL information. This would include any error or omission relating to non-published or non-listed DAL information. SBC also believes that we should be able to charge DAL purchasers the same rate for these listings that SBC paid in purchasing them from other entities.

SBC continues to urge the Commission to rule on the pending petition on an expedited basis. If you have any questions, please give me a call.

Sincerely,

A handwritten signature in cursive script, appearing to read "Toni Acton".

Toni R. Acton
Associate Director

cc: M. Greene
R. McDonald
D. Cooper